IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8659 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURAT PEOPLE'S CO OPERATIVE BANK LTD

Versus

COMMISSIONER OF INCOME TAX (APPEALS-I)

Appearance:
MR NV ANJARIA for Petitioner
MR BB NAIK WITH MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE C.K.BUCH

Date of decision: 15/02/2000

ORAL JUDGEMENT (J.N.Bhatt, J.)

The short question which has come up for consideration and adjudication in this petition under Article 226 of

the Constitution of India is, as to whether the order passed by the appellate authority dismissing the appeal against the order of the Assessing Officer, for the assessment year 1994-95, is, in any way, vulnerable or not. After having taken into consideration the entire record of the case, it leaves no manner of doubt, in our minds, that it manifests non-application of mind and non-observance of the procedure, statutorily, prescribed in section 250 of the Income Tax Act, 1961 (IT Act).

When the appeal is directed against the order of the Income Tax Officer, who has passed the order, under section 143(3)of the IT Act and various grounds have been taken up in an appeal against the decision of the Assessing Officer, obviously, the appellate authority is obliged to not only, mechanically, follow the procedure prescribed in section 250 of the IT Act, but is also bound to be live to the grounds stated in the memo of appeal and to pass order considering the grounds raised by the appellant. We are sorry to say that the manner and mode in which the impugned order is recorded by the respondent, would ipso facto testify not only the non-observance of the procedures prescribed under section 250 of the IT Act, but also evident non-application of mind. This is, precisely, the reason why, and also when the matter is admitted by us long before, instead of directing the petitioner or relegating him to the statutory remedy of further appeal, we deem it expedient to decide the merits of this petition exercising our powers under Article 226 of the Constitution of India. The objection taken by learned Central Government Counsel Mr Naik regarding the remedy against the impugned order before the Income Tax Tribunal, ordinarily, would have been acceptable, but for the peculiar facts and special circumstances, we have not been able to accept the same in the present case.

In the result, the impugned order of the respondent appellate Authority is quashed and set aside, with a direction to rehear and dispose of the the appeal after giving an opportunity of hearing to the petitioner-original assessee, and bearing in mind the celebrated principles enunciated in section 250 of the IT Act. Accordingly, rule is made absolute to the aforesaid extent, with no order as to costs.

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(vjn)